CALIFORNIA'S STEM CELL AGENCY

CIRM

California Institute for Regenerative Medicine

MEMORANDUM

TO:	Members, Intellectual Property and Industry Subcommittee
FROM:	C. Randal Mills, President and CEO, James C. Harrison, General Counsel, Scott Tocher, Deputy General Counsel, and Neil Littman, Business Development Officer
RE:	CIRM Loan Program
DATE:	March 13, 2015

INTRODUCTION

CIRM established a loan program in 2009. The original aims of the program included recycling research funds to CIRM through the repayment of loans and the exercise of warrants issued to CIRM as a condition of the loan. At the time the Governing Board approved the loan program, CIRM anticipated that it would issue approximately $70 million worth of loans per year and that the agency would ultimately have a $500 million portfolio of loans. Since CIRM established the loan program, it has made five loans, two of which are still outstanding.[1] The Board has modified the program on multiple occasions in an effort to make the program more appealing to industry, but notwithstanding these efforts, the program has not met its original expectations.

As a result, consistent with the goals of CIRM 2.0, we have closely reviewed the loan program to evaluate whether it should be maintained. We believe that the program, if modified, can continue to serve two aims. First, it provides an alternative to our grant terms for applicants (and their co-funding partners) who may be unwilling to take CIRM funds because of the uncertainty associated with their potential liability for revenue sharing. Second, to the extent that loan recipients repay CIRM while the agency continues to make research awards, the proceeds of the loans can be recycled to make additional research awards. However, as presently structured, the loan program is overly-

[1] CIRM forgave two of the loans because the projects did not achieve their aims and one loan recipient repaid its loan when it decided to terminate its project for business reasons. The two outstanding loans are to Capricor and ViaCyte.

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complex, administratively burdensome, and as reflected in the number of loans issued, it does not appear to be attractive to industry. We therefore propose that the Subcommittee consider an alternative approach that would continue to serve the aims identified above, while simplifying the program, reducing the administrative burden, and making it a more realistic and compelling option for awardees. Under this proposal, recipients of CIRM's clinical stage project awards (PA 15-01, 15-02 and 15-03) would have the option to elect to convert their award from a grant to a loan within a specified period of time from the effective date of the award, e.g., seven years. Unless the parties agreed to different terms, the awardee would be required to repay the loan balance within ten days of making the election to convert from a grant to a loan at an interest rate that would escalate based on the date of repayment. For example, an awardee that repaid CIRM within three years of the effective date of the award would pay a lower interest rate than an awardee that elected to convert to a loan six years after the effective date. Conversion from a grant to a loan would become final only after the awardee has satisfied the terms of the conversion. To the extent that CIRM is no longer in existence at the time of repayment, the awardee would repay the General Fund of the State of California. If an awardee does not convert an award to a loan, it would still be subject to the revenue sharing provisions and other terms of CIRM's intellectual property regulations.

This program offers several advantages over the existing program. First, the escalating interest rate would create an incentive for awardees to repay CIRM early, so that the agency could use the proceeds to make new research awards. Second, it would reduce CIRM's administrative burden because it would obviate the need to negotiate a loan agreement with each loan recipient and to maintain and enforce a separate administrative policy to cover loans.[2] Third, it would dramatically reduce the complexity of the program by eliminating the need to address issues like forgiveness, subrogation, and change of control. Finally, because of its simplicity and the certainty it would offer, we believe that the program may be a more compelling alterative to a grant than the existing program.
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RECOMMENDATION

[2] Even though CIRM has used a loan template agreement, each loan has required individual negotiations to complete.

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We request that the Intellectual Property and Industry Subcommittee recommend Board approval of a modified loan program for clinical stage project awardees, as described in the attachment to this memorandum.

Loan Election Policy

(1) An Awardee may elect to convert its Award from a Grant to a Loan within _____ (_) years of the Effective Date of the Grant by sending CIRM written notice of its election. Unless CIRM and the Awardee agree to a different repayment period and terms, an Awardee that elects to convert a Grant to a Loan shall repay CIRM the outstanding balance of the Loan, plus interest at the rate specified in paragraph (2), within ten (10) days of making the election.

(2) The interest rate shall be a per annum rate equal to the London Inter-Bank Offered Rate ("**LIBOR**") for a one-year deposit in U.S. dollars, as published by the Wall Street Journal (or if the Wall Street Journal is not available, a comparable source) on the Effective Date of the Grant, plus the percentage specified in subparagraphs (a) through (e), depending upon the date of the election. Interest shall be compounded annually on the principal amount disbursed by CIRM.

(a) if the Awardee repays CIRM within three (3) years of the Effective Date of the Grant, the interest rate shall be equal to LIBOR plus ___ (_) percent);

(b) if the Awardee repays CIRM during the fourth year after the Effective Date of the Grant, the interest rate shall be equal to LIBOR plus ___ (_) percent);

(c) if the Awardee repays CIRM during the fifth year after the Effective Date of the Grant, the interest rate shall be equal to LIBOR plus ___ (_) percent);

(d) if the Awardee repays CIRM during the sixth year after the Effective Date of the Grant, the interest rate shall be equal to LIBOR plus ___ (_) percent); and

(e) if the Awardee repays CIRM during the seventh year after the Effective Date of the Grant, the interest rate shall be equal to LIBOR plus ___ (_) percent).

. . .

(3) A Grant shall be considered to have been converted into a Loan only upon the Awardee's satisfaction of all of the terms specified in this Section, including any terms negotiated by the parties pursuant to Paragraph (1).

(4) CIRM reserves the right to modify this section, but the modification shall apply prospectively to Awards made after the modification takes effect and shall have no application to Awards made before the effective date of the modification.

(5) If CIRM is no longer in existence at the time repayment is required under this section, the Awardee shall repay the General Fund of the State of California.